



Water Act 1989

1989 CHAPTER 15

PART II

WATER SUPPLY AND SEWERAGE SERVICES

CHAPTER I

APPOINTMENT AND REGULATION OF WATER AND SEWERAGE UNDERTAKERS

Making and conditions of appointments

11 Appointment of undertakers

- (1) Subject to the following provisions of this Chapter, a company may be appointed—
- (a) by the Secretary of State; or
 - (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director,
- to be the water undertaker or sewerage undertaker for any area of England and Wales.
- (2) Without prejudice to the obligation of a company holding an appointment under this Chapter to comply with the conditions of its appointment, the appointment of a company to be the water undertaker or sewerage undertaker for any area shall have the effect while the appointment remains in force—
- (a) of requiring the company to perform any duty imposed by or under any enactment on an undertaker of the relevant description (that is to say, a water undertaker or, as the case may be, sewerage undertaker);
 - (b) of authorising the company, for the purposes of, or in connection with, the carrying out of any of the functions of an undertaker of the relevant description, to exercise any power conferred by or under any enactment on an undertaker of that description;
 - (c) of requiring enactments and subordinate legislation authorising or requiring anything to be done in relation to an undertaker of the relevant description to

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- be construed as authorising or requiring that thing to be done in relation to that company; and
- (d) of requiring other references in any enactment or subordinate legislation to an undertaker of the relevant description or to the area of that undertaker, to be construed, so far as necessary for the purposes of, or in connection with, the carrying out by that company of the functions of an undertaker of that description, as references to that company or, as the case may be, to that area.
- (3) The appointment of a company to be a water undertaker or sewerage undertaker shall be by service on the company of an instrument in writing containing the appointment and describing the area for which it is made; and a single instrument may contain the appointment of a company to be the sewerage undertaker for an area and the appointment of the same company to be the water undertaker for the whole or any part of that area or for an area which includes the whole or any part of that area.
- (4) It shall be the duty of the Secretary of State to make such appointments under this Chapter as will secure—
- (a) that on the transfer date a statutory water company becomes the water undertaker for the area appointment for which will, in the opinion of the Secretary of State, ensure that the company continues to supply water for the same area on and after that date as immediately before; and
- (b) that on the transfer date the successor companies become water undertakers for areas comprising so much of England and Wales as is not the subject of appointments by virtue of paragraph (a) above and sewerage undertakers for the areas which immediately before that date are the water authorities' areas for the purposes of section 14 of the 1973 Act (sewerage and sewage disposal);
- and to secure that such appointments are made under this Chapter as will ensure that for every area of England and Wales there is at all times on and after the transfer date both a company holding an appointment under this Chapter as water undertaker and (whether or not the same company in relation to the whole or any part of that area) a company holding an appointment as sewerage undertaker.
- (5) A company shall not be appointed to be a water undertaker unless it is a limited company or a statutory water company and shall not be appointed to be a sewerage undertaker unless it is a limited company.
- (6) Subject to subsection (7) and section 12 below—
- (a) the Secretary of State; and
- (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, the Director,
- shall have power, by notice to a company holding an appointment under this Chapter, to terminate the appointment or to vary the area to which it relates.
- (7) The appointment of a company to be a water undertaker or sewerage undertaker shall not be terminated or otherwise cease to relate to or to any part of any area except with effect from the coming into force of such appointments and variations to which section 12 below applies as secure either—
- (a) that another company becomes the water undertaker or, as the case may be, sewerage undertaker for that area or part or for an area that includes that area or part; or
- (b) that two or more companies each become the water undertaker or, as the case may be, sewerage undertaker for one of a number of different areas that together constitute or include that area or part.

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- (8) As soon as practicable after making an appointment under this Chapter or exercising any power to vary the area to which such an appointment relates, the Secretary of State shall send a copy of the appointment or variation to the Director.
- (9) In the House of Commons Disqualification Act 1975, in Part III of Schedule 1 (other disqualifying offices), there shall be inserted (at the appropriate place) the following entry—
- “Director of a company for the time being holding an appointment under Chapter I of Part II of the Water Act 1989 or of such a company’s holding company, being a director nominated or appointed by a Minister of the Crown or by a person acting on behalf of the Crown.”;

and the like insertion shall be made in Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975.

12 Restrictions on making replacement appointments

- (1) This section applies—
- (a) to any appointment of a company to be the water undertaker or sewerage undertaker for any area which is or includes the whole or any part of any one or more existing areas; and
 - (b) to any variation by virtue of which the area for which a company holds an appointment under this Chapter is modified so as to include the whole or any part of one or more existing areas.
- (2) An appointment or variation to which this section applies shall not be made in relation to the whole or any part of an existing area except where—
- (a) the existing appointee consents to the appointment or variation;
 - (b) the appointment or variation relates only to parts of that area none of the premises in which is served by the existing appointee; or
 - (c) the appointment or variation is made in such circumstances as may be set out for the purposes of this paragraph in the conditions of appointment of the existing appointee.
- (3) In determining whether to make an appointment or variation by virtue of subsection (2) (b) above in relation to any part of an existing area, the Secretary of State or, as the case may be, the Director shall have regard, in particular, to any arrangements made or expenditure incurred by the existing appointee for the purpose of enabling premises in that part of that area to be served by the existing appointee.
- (4) It shall be the duty of the Secretary of State or, as the case may be, of the Director, in making an appointment or variation to which this section applies and, where he makes such an appointment or variation, in determining what provision is to be made with respect to the fixing by the new appointee of—
- (a) charges in respect of services provided in the course of the carrying out of the functions of a water undertaker or sewerage undertaker; and
 - (b) amounts of any other description which such an undertaker is authorised by or under any enactment to require any person to pay,
- to ensure, so far as may be consistent with his duties under Part I of this Act, that the interests of the members and creditors of the existing appointee are not unfairly prejudiced as respects the terms on which the new appointee could accept transfers of property, rights and liabilities from the existing appointee.

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- (5) For the purposes of this section premises in a part of an existing area are served by the existing appointee—
- (a) in relation to an appointment or variation by virtue of which that appointee would be replaced as the water undertaker for that part of that area, if those premises—
 - (i) are supplied with water by means of a connection with a distribution main of the existing appointee; or
 - (ii) consist in a building or part of a building which is situated within thirty metres of such a main;
 and
 - (b) in relation to an appointment or variation by virtue of which that appointee would be replaced as the sewerage undertaker for that part of that area, if those premises—
 - (i) are drained by means of a relevant sewer; or
 - (ii) consist in a building or part of a building which is situated within thirty metres of such a sewer, not being a storm-water overflow sewer.
- (6) In this section—
- “distribution main” means a water main that is not a trunk main;
 - “existing area”, in relation to the appointment of any company to be the water undertaker or sewerage undertaker for any area or the variation of any company’s appointment as a water undertaker or sewerage undertaker, means an area for which, until the appointment or variation comes into force, another company (“the existing appointee”) holds the appointment as water undertaker or, as the case may be, sewerage undertaker;
 - “new appointee”, in relation to an appointment or variation to which this section applies, means the company which by virtue of the appointment or variation becomes the water undertaker or sewerage undertaker for the whole or any part of an existing area;
 - “relevant sewer”, in relation to an appointment or variation to which this section applies, means any of the following, that is to say—
 - (a) a public sewer vested in the existing appointee;
 - (b) a sewer in relation to which the existing appointee has made, or is treated as having made, a declaration of vesting under section 17 of the Public Health Act 1936 (vesting declarations) which has not yet taken effect;
 - (c) a drain or sewer in relation to which the existing appointee has, or is treated as having, entered into an agreement under section 18 of that Act.

13 Procedure for replacement appointments

- (1) An application for an appointment or variation to which section 12 above applies shall be made in such manner as may be prescribed; and, within fourteen days after making any such application, the applicant shall—
- (a) serve notice of the application on the existing appointee and on every local authority whose area includes the whole or any part of the area to which the application relates; and
 - (b) publish a copy of the notice in such manner as may be prescribed.
- (2) Before making an appointment or variation to which section 12 above applies, the Secretary of State or the Director shall give notice—

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- (a) stating that he proposes to make the appointment or variation;
 - (b) stating the reasons why he proposes to make the appointment or variation; and
 - (c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed appointment or variation may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (3) A notice under subsection (2) above shall be given—
 - (a) by publishing the notice in such manner as the Secretary of State or, as the case may be, the Director considers appropriate for bringing it to the attention of persons likely to be affected by the making of the proposed appointment or variation; and
 - (b) by serving a copy of the notice on the existing appointee and on every local authority whose area includes the whole or any part of the area to which the proposed appointment or variation relates.
 - (4) Before making an appointment or variation to which section 12 above applies, the Secretary of State shall consult the Director.
 - (5) As soon as practicable after making an appointment or variation to which section 12 above applies, the Secretary of State or the Director shall—
 - (a) serve a copy of the appointment or variation on the existing appointee; and
 - (b) serve notice of the making of the appointment or variation on every local authority whose area includes the whole or any part of the area to which the appointment or variation relates.
 - (6) Schedule 5 to this Act shall have effect with respect to the making of transitional provision for the purposes of, or in connection with, the making of an appointment or variation to which section 12 above applies.
 - (7) In this section “the existing appointee”, in relation to an appointment or variation to which section 12 above applies, means the company which is the existing appointee for the purposes of that section in relation to any area to the whole or any part of which the appointment or variation relates or, where there is more than one such company, each of them.

14 Conditions of appointment

- (1) An appointment under this Chapter may include—
 - (a) such conditions (whether or not connected with the supply of water, the provision of sewerage services or the exercise or performance of any power or duty conferred or imposed by or under any enactment on water undertakers or sewerage undertakers) as appear to the Secretary of State or, as the case may be, the Director to be requisite or expedient having regard to the duties imposed on him by Part I of this Act;
 - (b) conditions for the purposes of section 12(2)(c) above; and
 - (c) conditions requiring the rendering to the Secretary of State of a payment on the making of an appointment, or payments while such an appointment is in force, or both, of such amount or amounts as may be determined by or under the conditions.

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- (2) Without prejudice to the generality of paragraph (a) of subsection (1) above, conditions included in an appointment by virtue of that paragraph may—
- (a) require the appointed company to comply with any direction given by the Director as to such matters as are specified in the appointment or are of a description so specified;
 - (b) require the appointed company, except in so far as the Director consents to the company's doing or not doing them, not to do or to do such things as are specified in the appointment, or are of a description so specified; and
 - (c) provide for the reference to and determination by—
 - (i) the Secretary of State or the Director; or
 - (ii) on a reference by the Director, the Monopolies and Mergers Commission (in this Act referred to as “the Monopolies Commission”),
 of such questions arising under the appointment and of such other matters, including (in the case of references to the Commission) disputes as to determinations by the Director, as are specified in the appointment or are of a description so specified.
- (3) Conditions included in an appointment under this Chapter may contain provision for the conditions to cease to have effect or be modified at such times, in such manner and in such circumstances as may be specified in or determined by or under the conditions; and any provision included by virtue of this subsection in an appointment under this Chapter shall have effect in addition to the provision made by this Chapter with respect to the modification of the conditions of an appointment.
- (4) Subsection (5) below applies in relation to the appointment of any company under this Chapter in pursuance of section 11(4)(a) above where provision is contained in that appointment by virtue of subsection (2) or (3) above for postponing the determination of, or of any of the terms of, the conditions of the appointment with respect to the fixing by the company of—
- (a) charges in respect of any services provided by that company in the course of the carrying out of the functions of a water undertaker; or
 - (b) amounts of any other description which such an undertaker is authorised by or under any enactment to require any person to pay,
- until a time after the transfer date and before the end of the financial year current on that date.
- (5) Where this subsection applies in relation to a company's appointment, the conditions or terms mentioned in subsection (4) above shall not be determined in accordance with the provision so mentioned unless—
- (a) notice of the proposed determination has been served on the company;
 - (b) the company has been allowed a period of at least twenty-eight days from the date of service of the notice for making representations or objections with respect to the proposed determination; and
 - (c) the Secretary of State has considered any such representations or objections which have been duly made and are not withdrawn.
- (6) Where any question or other matter falls to be determined by the Monopolies Commission in pursuance of a provision contained in an appointment under this Chapter—

- (a) it shall be the duty of the Director, on being required to do so by the company holding that appointment, to refer that question or matter to that Commission; and
 - (b) it shall be the duty of that Commission to determine any question or other matter referred by virtue of paragraph (a) above in accordance with any regulations under subsection (7) below and with the principles which apply, by virtue of Part I of this Act, in relation to determinations under this Chapter by the Director.
- (7) The Secretary of State may by regulations make such provision as he considers appropriate for regulating the procedure to be followed with respect to the reference of any question or other matter to the Monopolies Commission in pursuance of provision contained in an appointment under this Chapter; and, without prejudice to the generality of that power, any such regulations may, in relation to any such reference, apply (with or without modifications) the provisions of any enactment relating to references to that Commission under the following provisions of this Act, the Fair Trading Act 1973 or the Competition Act 1980.
- (8) For the purposes of this Act where the same instrument contains an appointment of the same company to be both a water undertaker and a sewerage undertaker (whether or not for the same area), all the conditions included in that instrument by virtue of this section shall have effect, irrespective of their subject-matter, as conditions of both appointments.
- (9) Where an instrument of appointment has been served under subsection (3) of section 11 above on any company, the coming into force of the appointment for the purposes specified in subsection (2) of that section shall not be affected by any contravention of the requirements of this Act with respect to the provision contained by way of conditions of appointment in that instrument; and if the Secretary of State considers it appropriate to do so in consequence of any legal proceedings with respect to any such provision, he may by order made by statutory instrument direct that such conditions as may be specified in the order are to be treated as included in the appointment in question until there is an opportunity for the provision to which the proceedings relate to be replaced by virtue of any of the other provisions of this Chapter.
- (10) Any sums received by the Secretary of State in consequence of the provisions of any condition of an appointment under this Chapter shall be paid into the Consolidated Fund.